

AMENDED IN ASSEMBLY APRIL 18, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1585**

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**Introduced by Assembly Member Lieber**  
**(Coauthor: Assembly Member Saldana)**  
**(Coauthor: Senator Torlakson)**

February 23, 2007

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An act to amend Section 118950 of the Health and Safety Code, relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1585, as amended, Lieber. Tobacco products: nonsale distribution.

Existing law makes the nonsale distribution of any smokeless tobacco or cigarettes unlawful in any public building, park or playground, or on any public sidewalk, street, or other public grounds, or on any private property that is open to the general public.

~~This bill would expand the prohibition to apply to any nonsale distribution of any smokeless tobacco or cigarettes to anyone regardless of whether the distribution was on public or private property, and would make conforming changes. The bill would make the prohibition also applicable to manufacturers, distributors, and retailers, would include gift certificates, credits, and proofs of purchase within the prohibited distributions, and would delete an exemption for tobacco product distribution in connection with the sale of another item.~~

*This bill would include gift certificates, gift cards, or other similar offers, within the prohibited distributions and would make conforming changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 118950 of the Health and Safety Code is*  
2     *amended to read:*

3     118950. (a) The Legislature hereby finds and declares the  
4     following:

5     (1) Smoking is the single most important source of preventable  
6     disease and premature death in California.

7     (2) Smoking is responsible for one-quarter of all death caused  
8     by fire.

9     (3) Tobacco-related disease places a tremendous financial  
10    burden upon the persons with the disease, their families, the health  
11    care delivery system, and society as a whole.

12    (4) Despite laws in at least 44 states prohibiting the sale of  
13    tobacco products to minors, each day 3,000 children start using  
14    tobacco products in this nation. Children under the age of 18 years  
15    consume 947 million packages of cigarettes in this country yearly.

16    (5) The earlier a child begins to use tobacco products, the more  
17    likely it is that the child will be unable to quit.

18    (6) More than 60 percent of all smokers begin smoking by the  
19    age of 14 years, and 90 percent begin by the age of 19 years.

20    (7) Use of smokeless tobacco products among minors in this  
21    state is increasing.

22    (8) Smokeless tobacco or chewing tobacco is harmful to the  
23    health of individuals and may cause gum disease, mouth or oral  
24    cancers, increased tooth decay and leukoplakia.

25    (9) Tobacco product advertising and promotion are an important  
26    cause of tobacco use among children. More money is spent  
27    advertising and promoting tobacco products than any other  
28    consumer product.

29    (10) Distribution of tobacco product samples, *gift certificates*,  
30    *gift cards, or other similar offers*, and coupons is a recognized  
31    source by which minors obtain tobacco products, beginning the  
32    addiction process.

33    (11) It is the intent of the Legislature that keeping children from  
34    beginning to use tobacco products in any form and encouraging  
35    all persons to quit tobacco use shall be among the highest priorities  
36    in disease prevention for the State of California.

37    (b) It is unlawful for any person, agent, or employee of a person  
38    in the business of selling or distributing smokeless tobacco or

1 cigarettes ~~from engaging to engage~~ in the nonsale distribution of  
2 any smokeless tobacco or cigarettes to any person in any public  
3 building, park or playground, or on any public sidewalk, street, or  
4 other public grounds, or on any private property that is open to the  
5 general public.

6 (c) For purposes of this section:

7 (1) “Nonsale distribution” means to give smokeless tobacco or  
8 cigarettes to the general public at no cost, or at nominal cost, or  
9 to give coupons, coupon offers, *gift certificates, gift cards, or other*  
10 *similar offers*, or rebate offers for smokeless tobacco or cigarettes  
11 to the general public at no cost or at nominal cost. Distribution of  
12 tobacco products, coupons, coupon offers, *gift certificates, gift*  
13 *cards, or other similar offers*, or rebate offers in connection with  
14 the sale of another item, including tobacco products, cigarette  
15 lighters, magazines, or newspapers shall not constitute nonsale  
16 distribution.

17 (2) “Smokeless tobacco” means (A) a loose or flat, compressed  
18 cake form of tobacco that may be chewed or held in the mouth or  
19 (B) a shredded, powdered, or pulverized form of tobacco that may  
20 be inhaled through the nostrils, chewed, or held in the mouth.

21 (3) “Public building, park, playground, sidewalk, street, or other  
22 public grounds” means any structure or outdoor area that is owned,  
23 operated, or maintained by any public entity, including, but not  
24 limited to: city and county streets and sidewalks, parade grounds,  
25 fair grounds, public transportation facilities and terminals, public  
26 reception areas, public health facilities, public recreational  
27 facilities, and public office buildings.

28 (4) “Private property that is open to the general public” means  
29 any structure or outdoor area that is owned, operated, or maintained  
30 by any private entity and that is open for entry or use by the general  
31 public, whether or not a fee or charge is imposed for entry or use.

32 (d) Any person who violates this section shall be liable for a  
33 civil penalty of not less than two hundred dollars (\$200) for one  
34 act, five hundred dollars (\$500) for two acts, and one thousand  
35 dollars (\$1,000) for each subsequent act constituting a violation.  
36 Each distribution of a single package, coupon, coupon offer, *gift*  
37 *certificates, gift cards, or other similar offers*, or rebate offer to  
38 an individual member of the general public in violation of this  
39 section shall be considered a separate violation.

(e) Neither this section nor any other provision of law shall invalidate an ordinance of, or prohibit the adoption of an ordinance by, a city or county regulating distribution of smokeless tobacco or cigarette samples within its boundaries that is more restrictive than this section. An ordinance that imposes greater restrictions on the sale or distribution of tobacco than this section shall govern, to the extent of any inconsistency between it and this section.

(f) ~~This section does Subdivisions (a) to (e), inclusive, do not~~ apply to any public building, park, playground, sidewalk, street, or other public grounds, or any private property that is open to the general public where minors are prohibited by law. ~~This section also shall Subdivisions (a) to (e), inclusive, do not~~ apply to any public building, park, playground, sidewalk, street, or other public grounds open to the general public and leased for private functions where minors are denied access by a peace officer or licensed security guard on the premises.

(g) ~~This section does Subdivisions (a) to (e), inclusive, do not~~ apply to any private property that is open to the general public where minors are denied access to a separate nonsale distribution area by a peace officer or licensed security guard stationed at the entrance of the separate nonsale distribution area and the separate nonsale distribution area is enclosed so as to prevent persons outside the separate nonsale distribution area from seeing the nonsale distribution unless they undertake unreasonable efforts to see inside the area.

~~SECTION 1. Section 118950 of the Health and Safety Code is amended to read:~~

~~118950. (a) The Legislature hereby finds and declares the following:~~

~~(1) Smoking is the single most important source of preventable disease and premature death in California.~~

~~(2) Smoking is responsible for one-quarter of all death caused by fire.~~

~~(3) Tobacco-related disease places a tremendous financial burden upon the persons with the disease, their families, the health care delivery system, and society as a whole.~~

~~(4) Despite laws in at least 44 states prohibiting the sale of tobacco products to minors, each day 3,000 children start using tobacco products in this nation. Children under the age of 18 years consume 947 million packages of cigarettes in this country yearly.~~

1     ~~(5) The earlier a child begins to use tobacco products, the more~~  
2     ~~likely it is that the child will be unable to quit.~~

3     ~~(6) More than 60 percent of all smokers begin smoking by the~~  
4     ~~age of 14 years, and 90 percent begin by the age of 19 years.~~

5     ~~(7) Use of smokeless tobacco products among minors in this~~  
6     ~~state is increasing.~~

7     ~~(8) Smokeless tobacco or chewing tobacco is harmful to the~~  
8     ~~health of individuals and may cause gum disease, mouth or oral~~  
9     ~~cancers, increased tooth decay and leukoplakia.~~

10    ~~(9) Tobacco product advertising and promotion are an important~~  
11    ~~cause of tobacco use among children. More money is spent~~  
12    ~~advertising and promoting tobacco products than any other~~  
13    ~~consumer product.~~

14    ~~(10) Distribution of tobacco product samples and coupons is a~~  
15    ~~recognized source by which minors obtain tobacco products,~~  
16    ~~beginning the addiction process.~~

17    ~~(11) It is the intent of the Legislature that keeping children from~~  
18    ~~beginning to use tobacco products in any form and encouraging~~  
19    ~~all persons to quit tobacco use shall be among the highest priorities~~  
20    ~~in disease prevention for the State of California.~~

21    ~~(b) It is unlawful for any manufacturer, distributor, or retailer,~~  
22    ~~or any person, agent, or employee of a person in the business of~~  
23    ~~selling or distributing smokeless tobacco or cigarettes, to engage~~  
24    ~~in the nonsale distribution of any smokeless tobacco or cigarettes.~~

25    ~~(c) For purposes of this section:~~

26    ~~(1) "Nonsale distribution" means to give smokeless tobacco or~~  
27    ~~cigarettes to anyone at no cost, or at nominal cost, or to give~~  
28    ~~coupons, coupon offers, gift certificates, credits,~~  
29    ~~proofs-of-purchase, or rebate offers for smokeless tobacco or~~  
30    ~~cigarettes at no cost or at nominal cost.~~

31    ~~(2) "Smokeless tobacco" means (A) a loose or flat, compressed~~  
32    ~~cake form of tobacco that may be chewed or held in the mouth or~~  
33    ~~(B) a shredded, powdered, or pulverized form of tobacco that may~~  
34    ~~be inhaled through the nostrils, chewed, or held in the mouth.~~

35    ~~(d) Any person who violates this section shall be liable for a~~  
36    ~~civil penalty of not less than two hundred dollars (\$200) for one~~  
37    ~~act, five hundred dollars (\$500) for two acts, and one thousand~~  
38    ~~dollars (\$1,000) for each subsequent act constituting a violation.~~  
39    ~~Each distribution of a single package, coupon, coupon offer, or~~

1 ~~rebate offer to an individual member of the general public in~~  
2 ~~violation of this section shall be considered a separate violation.~~  
3 ~~(e) Neither this section nor any other provision of law shall~~  
4 ~~invalidate an ordinance of, or prohibit the adoption of an ordinance~~  
5 ~~by, a city or county regulating distribution of smokeless tobacco~~  
6 ~~or cigarette samples within its boundaries that is more restrictive~~  
7 ~~than this section. An ordinance that imposes greater restrictions~~  
8 ~~on the sale or distribution of tobacco than this section shall govern;~~  
9 ~~to the extent of any inconsistency between it and this section.~~

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